Physician Arrangement Integrity

Agenda

1. Stark Law and Anti-kickback Statute
2. Lessons learned from recent settlements
3. Pitfalls of today’s process
4. Operational and financial best practices
5. Case study from Chicago system
Stark Law applies to physicians and entities only (does not require intent)

- **Prohibition**: If a physician, or a member of the physician’s immediate family, has a financial relationship with an entity, then the physician is prohibited from making a referral to the entity for the provision of a designated health service paid for by Medicare, and the entity is prohibited from billing for such service, unless an exception is satisfied in its entirety\(^1\)
- Stark only applies to physicians
- **Strict liability statute** = No margin for error!
  - Compare: Federal Anti-Kickback Statute is intent-based

\(^1\) See 42 U.S.C. § 1395nn and 42 C.F.R. 1395nn

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Anti-Kickback Statute applies to everyone and requires intent

- **Prohibition**: It is a felony to knowingly and willfully offer, pay, solicit, or receive anything of value to induce or reward referrals or generate Federal health care program business
- **The AKS applies to everyone (not just providers or physicians)**
  - E.g.: vendors, manufactures, GPOs, marketers, directors, etc. may be liable.
  - Statute often used in criminal cases against patient recruiters, etc.
- **Intent-based/one purpose**
- **“Exceptions”** = Safe Harbors
  - Arrangements are afforded absolute protection under the AKS if they comply with all of the applicable Safe Harbor requirements
7 elements of safe harbor to confirm for physician arrangement compliance

- Term of at least one year
- In writing by both parties
- Specify aggregate payment and set in advance
- Payment is reasonable and fair market value
- Compensation not related to volume or value of business
- Exact services to be performed must be outlined
- Services are commercially reasonable

What leads to large Stark Law settlements?

**Settlement of OIG Lawsuits**

- **45-Day Period Yields > Quarter of a Billion in DOJ Settlements**
  - Columbus Regional/Dr. Pappas settles $35 M/$425 K plus CIA (Sept. 4)
  - North Broward settles for $69.5 M (Sept. 15)
  - Adventist settles $118.7 M (Sept. 21)
  - Tuomey settles for $72.4 M plus CIA (Oct. 16)

**Recent Voluntary Disclosure: March 31, 2015**

- Robinson Health System
  - $10M
  - Timesheets missing and other technical violations

OIG Fraud Alert: Physician compensation arrangements may result in significant liability, June 9, 2015
RECENT SETTLEMENTS

Summarized best in April 20, 2015 release of “Practical Guidance”

Identifying and Auditing Potential Risk Areas

Some regulatory risk areas are common to all health care providers. Compliance in health care requires monitoring of activities that are highly vulnerable to fraud or other violations. Areas of particular interest include referral relationships and arrangements billing problems (e.g., upcoding, submitting claims for services not rendered and/or medically unnecessary services), privacy breaches, and quality-related events.

Source: Practical guidance for Health Care Boards on Compliance Oversight, AHIA, AHLA, HCCA and OIG, April 20, 2015
Tips for agreement setup

- Use Templates
- Annual review of all agreements
- Compliance audits
- Financial review

Technical violations occur after the agreement is setup – related to payments

- Setup is correct
- FMV set at start
- Physician writes non-compensable duty on time log
- FMV is breached because a payment is incorrect
THIS IS NOT THE RIGHT FONT BUT THE RIGHT COLORS
Pascale Dargis, 8/28/2015
Summary of lessons we from recent settlements to consider in 2016

1. Employment is not a safe harbor

2. Physicians being warned, shoulder responsibility with Fraud Alert

3. SRDP is always significantly less than cases that surface from relators (see OIG website for specifics: http://www.oig.hhs.gov/compliance/self-disclosure-info/protocol.asp)

4. Yates Memo, executives you are now accountable as well

PITFALLS WITH TODAY’S PROCESSES
Manual processes can lead to technical violations, ie paper time logs

Results of paper processes

- Room for error
- Frustrating for physicians
- Compliance risks
- Measuring spend

Most tracking currently takes place on paper and goes through a multitude of steps for approval and payment
Pitfall: Process related

- **Contract ends** but physician continues to submit time logs and receiving payment
- **Late logs** are submitted all together at the end of a year for payment by the physician
- **Multiple time logs** are submitted for the same month or same duties worked and then paid
- **Duties** are not actually checked against time logs
- **Illegible** time logs are often submitted and paid
- **Time logs** are not routinely collected for independent and employed physicians where needed
- **Paper** disappears, time logs are misplaced

Pitfall: Agreement parameters unclear

- **Duties** aren’t outlined clearly or described within the contract
- **Time to submit** post-period close isn’t appropriately outlined within the contract
- **Time log format** leads to incorrect information being recorded
- **Duplication** with other agreement wherein a physician could be receiving payment for the same duty in two places
- **Joinders are missing** for physician group agreements
Pitfall: Fair Market Value (FMV) breached

- **Operationally** FMV is not maintained when a monthly or annual maximum is exceeded
- **Contract is not adjudicated** financially on a consistent basis, or ever
- **Layering of agreements** leads to duplication of duties and time paid
- **Calculations** are incorrect
- **Math** is incorrect in the contract or so complex it is too difficult to follow

BEST PRACTICES FOR ACTIVE MANAGEMENT
1. Remove steps that aren’t adding value

Does the log meet the terms of the agreement?
1. Did the physician document the work?
2. Work is within scope of the agreement?
3. Physician signed the time log?
4. Did leadership confirm the work?
5. Did the work pass compliance audit?
6. Timeframe for submission is current?
7. Did the agreement expire?
8. Are approvals in place?
9. Has this payment already been made?
10. Is the pay at Fair Market Value?

2. Collect time logs for all non patient care activities for employed or independent

| DocTime Log - Dr. Sally Gupta | Client: Saint Elsewhere Hospital  
| Contract: Director of Hematology  
| Cycle: 03/01/2015 – 03/31/2015 |

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3. Standardize and streamline duties

- Ensure that the service line adheres to each hospital’s policies and procedures, applicable laws and regulations, accreditating body requirement and other regulatory compliance, and make recommendations to hospital personnel.
- The Director shall ensure compliance with regulatory agencies governing the medical staff, including the Joint Commission and state and federal agencies with the assistance of hospital personnel in the service.
- The Medical Director, in collaboration with the unit leadership, nursing director and hospital leadership, facilitates compliance with: department policies; TJC standards; federal rules and regulations; corporate integrity agreements

Reduce Variation
- Time consuming to check time log against specific duties each month – operational challenge

10 Unique Duties Per Facility
(10 x 60 = 600)

4. Approvers should be trained and have clear accountability

Access to physician’s historical and current logs

Access to actual contract
Turn into one slide with following 2
Pascale Dargis, 9/16/2015
5. Mind the math not only with setup but with every payment

**Current time log details**

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<th>Agreement</th>
<th>Rate</th>
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<th>Avg Hour P&amp;I</th>
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Total (23 Stories) $63,593.82 $65,593.82 $79,278.90

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**CASE STUDY: ONE SYSTEM’S APPROACH**

[24]
Compliance Program Amita Health

Phase I
1. Reduce contract variation – template contracts
2. Lock the documents to prevent edits
3. A/P accountable for verifying contract before payment

Phase II
1. Contract management system
2. Additional review of dates, amounts and live agreement
3. Stark/AKS training for management
4. Testing with audit

Compliance Program Amita Health

Phase III
1. FTE added in legal to review all payment requests
2. Sign off by Legal/ Compliance for all physician contracts
3. Training - people and expectations
4. Audit

Phase IV
1. Automation for input and approvals
2. Close gaps in process with automation solution
3. Training - people and expectations
4. Signature Authority defined
5. Reporting for Management
6. Audit
Thank you!

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